



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASK WELLNESS SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **CNC, OPC**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to sections 47 and 55.

The agents KP and LM (the building manager) attended for the landlord (“the landlord”). The tenant attended with his brother and advocate JAB (“the tenant”).

#### *1. Attendance*

The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions.

#### *2. Service*

No issues of service were raised. I find each party served the other in compliance with the Act.

### *3. Settlement Discussions*

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

I informed both parties that I could not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The Arbitrator assisted the parties in efforts to settle the matter.

Settlement discussions were unsuccessful, and the hearing continued.

### *4. Order of Possession*

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord.

The landlord requested an Order of Possession effective May 31, 2023.

#### Issue(s) to be Decided.

Is the tenant entitled to an order cancelling the One Month Notice?

Is the landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

### *Tenancy*

The landlord testified the landlord organization provides housing for low- and moderate-income earners. The tenant's unit is subsidized through BC Housing. Rent is based on single occupancy. The rent of \$850.00 is subsidized and the tenant pays \$346.00.

The tenancy began February 1, 2022. The tenant paid a security deposit of \$425.00 at the start of the tenancy.

The parties agreed the building in which the unit is located is for residents 55 and over. The agreement in section 14 states the tenant may not have a guest for more than 14 days a year in total. Only an occupant approved by the landlord may reside in the unit.

The landlord claimed the tenant had a female guest more than 14 days from the start of the tenancy, until the One Month Notice was issued less than a year later. The landlord requested an Order of Possession. The tenant denied the allegation and asked that the tenancy continue.

### *One Month Notice*

The parties agreed the landlord issued a One Month Notice as follows:

<b>INFORMATION</b>	<b>DETAILS</b>
Type of Notice	One Month Notice
Date of Notice	December 14, 2022
Effective Date of Notice	January 31, 2023
Date and Method of Service	Attached to door on December 15, 2022
Effective Date of Service	December 18, 2022
Reasons for Issuance	Breach material term
Application for Dispute Resolution filed - date	January 16, 2023 (Outside ten-day period)

The Notice is in the standard RTB form and stated:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc.  
This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):  
Letters issued:  
October 11, 2022 - Breach / Guest  
September 13, 2022 - Breach / Guests

This unit is a subsidized (RGI) unit and has a guest policy. The landlord has provided notice requesting compliance to this policy.

### *Landlord's Evidence*

in section 14, the agreement limits a guest's stay to 14 days in a 6-month period. Any guest staying longer is considered a tenant and must be added to the lease agreement. This will change the calculation of rent.

The tenant was the only tenant to the agreement with the landlord.

The landlord testified the tenant had a guest, who stayed in his unit more than 14 days. The dates the guest stayed, which meant she slept in the unit overnight, included from September 9 to October 14, 2022, and from December 10 to December 13, 2022.

The agent AM spoke with the tenant on September 9, 2022, as the guest had been present in the unit for some undetermined time. AM informed the tenant the tenancy was in jeopardy because of the ongoing presence of the guest. The tenant told AM he was helping a friend.

The landlord issued a warning letter to the tenant on September 13, 2022, a copy of which was submitted as evidence, stating the guest's presence was a breach of a material term. The letter quoted the relevant sections of the agreement. The tenant was warned the situation would lead to eviction.

On September 21, 2022, the agent LM called the tenant who did not confirm that the guest had left.

On October 7, 2022, the agent LM went to the tenant's unit and learned the guest was there. The tenant told LM he was not certain when the guest would leave.

On October 11, 2022, the landlord issued a second and final letter to the tenant stating the tenant was in breach of the lease and if the guest was not

permanently removed by October 14, 2022, the landlord would proceed with eviction.

The landlord learned the guest was in the tenant's unit from December 10 to 13, 2022.

The landlord issued a One Month Notice claiming breach of a material term. The Notice was attached to the tenant's door on December 15, 2022.

As the tenant was away at the time the Notice was posted, the landlord did not object to the late filing of the tenant's application to dispute the Notice.

The police were called to the unit to deal with an altercation. The guest was intimidating to residents and was believed to be using drugs.

the tenant was difficult, defiant and troublesome. The landlord did not want the tenancy to continue.

The landlord requested an Order of Possession effective May 31, 2023.

### *Tenant's Evidence*

The tenant acknowledged he rented a unit in a 55+ building and he was the sole tenant.

The guest was a long-time friend who was undergoing personal challenges. The tenant helped her by allowing her to stay in his unit or to come there and shower.

The number of days was not 14 or more as alleged by the landlord. In fact, she would only spend a few hours at a time in his unit. She did not sleep there over night. She spent less than 14 days in the unit in the year.

The tenant acknowledged the landlord considered the presence of the guest to be a breach of a material term. However, the tenant needed his help. She did not

have housing. She now lives in secure housing in another town. He could not promise she would not visit him again.

### Analysis

I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

### *Credibility*

The landlord submitted convincing testimony from two representatives, one of whom is the building manager. They submitted many well-organized documents with a table of contents.

I find the landlord's submissions to be persuasive, credible, and forthright. The testimony regarding the reasons for issuance of the Notice was supported in all material aspects by documentary evidence. The agents engaged with the tenant in a compassionate and respectful manner, giving him many opportunities to comply with the requirement regarding guests.

I accept the landlord's evidence in its totality. Their version of events contains reliable and accurate facts.

I do not believe the tenant when he says the guest did not stay overnight or merely visited occasionally for a few hours. His assertions regarding the guest are self-serving and disingenuous.

I find the landlord's evidence to meet the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Therefore, I give the landlord's evidence the greatest weight. Where their version of events differs, I prefer the landlord's version.

*Burden of Proof*

The landlord issued a Notice to End Tenancy.

In this case, the onus or burden shifts to the landlord to prove the reasons on the Notice. The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the Notice. The only reason relied upon by the landlord is that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Section 47(1) of the Act allows a landlord to end a tenancy for cause for any of the reasons cited in the section. A party may end a tenancy for the breach of a material term of the tenancy. Section 47(h) of the Act states as follows:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

As noted in *RTB Policy Guideline #8 – Unconscionable and Material Terms*, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement.



To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement. It falls to the person relying on the term, in this case the landlords, to present evidence and argument supporting the proposition that the term was a material term.

The question of whether a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. The same term may be material in one agreement and not material in another. Applications are decided on a case-by-case basis. Simply because the parties have stated in the agreement that one or more terms are material, is not decisive. The Arbitrator will look at the true intention of the parties in determining whether the clause is material.

The party claiming a breach of a material term must establish that the breach makes it impossible for the tenancy to continue.

*Policy Guideline #8* reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- that there is a problem.
- that they believe the problem is a breach of a material term of the tenancy agreement.
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy...

The landlord's requirement that the tenant comply with the agreement concerning guests is understandable in an over 55 facility such as this one. The tenant knew the rules about guests when he moved in. the landlord frequently repeated the rules to him verbally and in writing.

The tenant was informed many times that the guest could not stay more than 14 days in total. He was asked to have her move out many times.

The landlord set fair and compassionate boundaries for the tenant to address the problem of his overstaying guest over several months. The landlord gave the tenant many opportunities to comply with the rules. The tenant failed repeatedly to do so.

The landlord warned the tenant they would end the tenancy if the breaches continued, and they are entitled to do so.

I find the agreement, the many warnings and the multiple failures of the tenant to comply amount to breach of a material term entitling the landlord to end the tenancy.

### *Summary*

Accordingly, I dismiss the tenant's application to cancel the Notice without leave to reapply.

I grant the landlord an Order of Possession effective May 31, 2023.

Conclusion

I dismiss the tenant's application to cancel the Notice without leave to reapply.

I grant the landlord an Order of Possession effective May 31, 2023.

This Order must be served on the tenant. The Order may be enforced in the courts of the Province of BC.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 11, 2023

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Residential Tenancy Branch